

JAN 14 2013

JULIA C. DUDLEY, CLERK
BY: 
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION

GENERAL M. DUFF, JR.,

Plaintiff,

v.

MICHAEL J. ASTRUE, COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

CIVIL ACTION NO. 6:11-cv-00034

ORDER

JUDGE NORMAN K. MOON

This matter is before the Court on the parties' cross Motions for Summary Judgment (docket nos. 13 and 15), and the Report & Recommendation of United States Magistrate Judge Robert S. Ballou (docket no. 21, hereinafter "Report"). Pursuant to Standing Order 2011-17 and 28 U.S.C. § 636(b)(1)(B), the Court referred this matter to Judge Ballou for proposed findings of fact and a recommended disposition. The parties filed cross motions for summary judgment, and on December 13, 2012, Judge Ballou filed a Report recommending that Defendant's motion be denied, Plaintiff's motion be granted in part, and that the case be reversed and remanded to the Commissioner with instructions for the Administrative Law Judge ("ALJ") to consider Dr. Sloop's October 18, 2010 report for the purpose of determining whether Plaintiff suffers from a disabling mental impairment. After a review of the entire record in this case, and no objection having been filed to the Report within fourteen days of its service upon the parties, I adopt the Report in its entirety.

Accordingly:

1. The Report of December 13, 2012, is hereby ADOPTED in its entirety;

2. Defendant's motion for summary judgment (docket no. 15) is hereby DENIED;
3. Plaintiff's motion for summary judgment (docket no. 13) is hereby GRANTED IN PART; and
4. This case is hereby REVERSED and REMANDED to the Commissioner for further proceedings consistent with the direction and recommendations given in the Report. On remand, the ALJ should consider Dr. Sloop's October 18, 2010 report, which is both new and material, in order to determine whether Plaintiff's impairments meet the criteria for mental retardation under 20 C.F.R. pt. 404, subpt. P, app. 1, § 12.05C (2012).

The Clerk of the Court is hereby directed to send a certified copy of this Order to all counsel of record and to United States Magistrate Judge Robert S. Ballou.

It is so ORDERED.

Entered this 14th day of January, 2013.


NORMAN K. MOON
UNITED STATES DISTRICT JUDGE